

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: LIPOMA et al.)	
)	Conf. No.: 3984
Serial No.: 10/807,901)	
)	Group Art Unit: 3731
Filed: March 24, 2004)	
)	Examiner: HOUSTON, Elizabeth
For: LANCING DEVICE WITH FLOATING)	
LANCET)	

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

January 8, 2009

Filed Electronically

This is submitted in response to the Examiner's Amendment and Statement of Reasons for Allowance sent with the Notice of Allowability mailed October 8, 2008.

The Applicant's undersigned counsel's contemporaneous notes from the telephone call from the Examiner on September 25, 2008 are inconsistent with the substance of the Examiner's Amendment. Applicant's counsel understood that the Examiner's position at that time was that Claims 7-12 and 19-29 (as set out in Applicant's July 25, 2008 Response) were allowable, and that the forthcoming Examiner's Amendment would amend Claims 7-12 to include the subject matter of Claim 1, and would amend Claim 25 to remove the word "the" in the second line to address an antecedent basis issue, thereby placing them in condition for allowance. Applicant's counsel understood that Claim 21 was allowable as it stood, and that no amendment was needed to this claim.

The Examiner's Amendment instead amends Claim 1 to include the subject matter of Claims 8 and 9, and amends Claim 21 to include the subject matter of Claim 22. As a result, the scope of the allowed claims is substantively different than what Applicant's counsel

understood had been agreed to. Counsel apologizes if the misunderstanding was on my part. Undersigned counsel and the Examiner exchanged voicemails in an attempt to resolve the misunderstanding by phone, but were not able to speak directly before the day the issue fee payment came due. Accordingly, Applicant is submitting a proposed Amendment Under 37 C.F.R. §1.312 along with this paper, requesting amendment of the claims as had been understood by counsel. A continuing application has also been filed to preserve applicant's ability to pursue additional claim coverage if the Section 312 Amendment is not entered.

Applicant also provides the following comments on the Examiner's Statement of Reasons for Allowance: Applicant traverses that the cited references disclose lancets that decouple from the drive mechanism to slidably float during a portion of the lancet stroke. The art of record may teach separate parts of a drive mechanism that move relative to one another, but none of the cited references teach decoupling the lancet from the drive mechanism. Rather, in the Fukuzawa and Duchon references, the spring of the drive mechanism continues to act on the lancet throughout the lancing stroke. In the devices disclosed by the Tezuka and Hamamoto references, there is never engagement between the lancet and drive spring. And even so, the drive pistons of the Tezuka and Hamamoto devices continue to act on the lancet through the lancing stroke without decoupling--otherwise, the return springs (element 206 of Tezuka, and element 17 of Hamamoto) would seemingly interfere with advancement of the lancet.

Respectfully submitted,



Bradley K. Groff
Reg. No. 39,695

Customer No. 23506
GARDNER GROFF
GREENWALD & VILLANUEVA, PC
Tel: 770/984-2300
Fax: 770/984-0098